Kay Hian & Co (Pte) v Jon Phua Ooi Yong & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 718 OF 1987
CHAN SEK KEONG J
17 NOVEMBER 1988

Companies and Corporations – Interpleader summons – Second defendants in receivership – Competing claims on shares purchased by second defendants – Debenture executed by second defendants – Shares covered by debenture – Restriction clause in debenture – Subsequent specific charge on shares – Failure to make search – Actual notice or constructive notice – Whether consideration furnished – Burden of proof

This is an interpleader summons taken out by the plaintiffs who, as sharebrokers, were holding the certificates for 8,000 shares in Singapore Press Holdings Ltd ('SPH shares') registered in the name of the first defendant. The rival claimants to the beneficial ownership of the 8,000 SPH shares were the first defendant, the receivers and managers of the second defendants and the third defendants as an equitable mortgagee or pledgee. The plaintiffs were sharebrokers who had acted for the second defendants in the purchase of the 8,000 SPH shares. The shares were paid for by the second defendants, after which the sharebrokers were instructed by the second defendants to register them in the name of the first defendant. They carried out such instructions. A board resolution of the second defendants agreeing to such transfer was given to the plaintiffs. Prior to this instruction, the original certificates for the 8,000 SPH shares had been deposited with the third defendants as security, ie 6,000 on 20 May 1987 and 2,000 on 2 June 1987. The third defendants released these certificates to the second defendants for registration in the name of the second defendants. They were then delivered to the plaintiffs who sent the relevant transfers to the Registrars of Singapore Press Holdings Ltd for registration. The second defendants went into receivership in Singapore on 8 May 1987. On 11 June 1987, the receivers and managers wrote to the plaintiffs and claimed that the 8,000 SPH shares belonged to the second defendants. The first defendant then made a claim that he was the beneficial owner of the said shares. The claim is in effect a claim by the receivers and managers in discharge of their duty to recover the charged assets of the company for the benefit of the debenture holder. The true claimant in this case is the debenture holder and not the second defendants. The second defendants had executed a debenture ('the debenture') on 16 December 1985 in favour of Citibank NA whereby they charged all their undertaking, property and assets, present and future, by way of floating charge as security for the payment of all moneys or liabilities becoming due to Citibank NA. The debenture contained the standard restriction clause. The third defendants' claim to the 8,000 SPH shares was founded upon a memorandum of deposit dated 23 April 1987 and a letter of pledge dated 6 May 1987. Counsel for the third defendants does not dispute that by virtue of the registration of the debenture, the third defendants are deemed to have notice or knowledge of the debenture by way of the floating charge but he disputed that such registration constitutes notice of the restriction clause in the terms of the debenture. The issue is who has to prove that he has priority in respect of the 8,000 SPH shares and what are the elements of that burden of proof.

Held:

(1) This is a contest between a prior floating chargee and a subsequent specific chargee. The general principle is that whoever makes an assertion must prove it. In the present case, the receivers and managers have no need to assert priority against the third defendants. They only need to produce the debenture which gives the debenture holder a floating charge before any other claimant. It is the third defendants who have to assert that they have displaced the prior encumbrancer in respect of the 8,000 SPH shares; they are asserting priority. Accordingly, the burden of proof is on them.

(2) The position of the third defendants is that of, or akin to, a bona fide purchaser for value without notice of the rights of a prior encumbrancer, in this case, the rights of the debenture holder under a debenture which contains a restrictive clause. There is no doubt that consideration was provided by the third defendants for 6,000 SPH shares. However, the same cannot be said for the remaining 2,000 SPH shares on 6 May 1987. No further credit was provided as the second defendants were put into receivership on 8 May 1987.

(3) With regard to the question of actual notice or constructive notice, as the court did not hear oral evidence, it would not be proper or correct to make any finding on whether there was constructive notice.

(4) The third defendants have failed to discharge the burden of proving that they had no notice of the debenture and the particulars registered with the Registrar of Companies.

(5) The plaintiffs are to deliver the 8,000 SPH shares to the receivers and managers for disposal under the terms of the debenture. The costs of the plaintiffs and the receivers and managers in these proceedings were ordered to be borne by the first and third defendants equally.

[*Editorial Note*: The third defendants have appealed to the Court of Appeal vide Civil Appeal No 3 of 1988.]

Cases referred to

1 *Wilson* v *Kelland* [1910] 2 Ch 306 (refd)
2 *Feuer Leather Corpn* v *Johnstone & Sons* [1981] Com LR 251 (refd)
3 *GL Baker Ltd* v *Medway Building & Supplies Ltd* [1958] 1 WLR 1216 (refd)
4 *Union Bank of Halifax* v *The Indian & General Investment Trust* (1908) 40 SCR 510 (refd)

Khwaja Imran Hamid for the plaintiffs.
Aridas Vytilingam for the first defendant.
Michele S Rasanayagam (Ms) for the second defendants.
Hiew Hin Chung for the third defendants.

Cur Adv Vult

Chan Sek Keong J: This is an interpleader summons taken out by the plaintiffs who, as sharebrokers, were holding the certificates for 8,000 shares in Singapore Press Holdings Ltd ('SPH shares') registered in the name of the first defendant. Initially, the rival claimants to the beneficial ownership of the 8,000 SPH shares were the first defendant and the receivers and managers of the second defendants. Subsequently, the third defendants also made a claim to the same shares as an equitable mortgagee or pledgee in priority to the claims of the receivers and managers.

This action was heard solely on affidavit evidence. No deponent was cross-examined on the statements or on the documents produced herein. This has resulted in the court being given an incomplete picture of what had actually transpired in this case. This made it difficult for the court to decide the matter on the merits of the case. The point of this observation will become clear at the end of this judgment.

The plaintiffs were sharebrokers who had acted for the second defendants in the purchase of, inter alia, the 8,000 SPH shares. It was not disputed that the said shares were purchased a short while before 23 April 1987 and that they were paid for by the second defendants. As far as the plaintiffs were concerned, after they had purchased the said shares on behalf of the second defendants, they were instructed by the second defendants to register them in the name of the first defendant. They carried out such instructions. A board resolution of the second defendants resolving to agree to such transfer was given to the plaintiffs. It would appear that prior to this instruction, the original certificates for the 8,000 SPH shares had been deposited with the third defendants as security, ie 6,000 on 20 May 1987 and 2,000 on 2 June 1987. The third defendants released these certificates to the second defendants for registration in the name of the second defendants. They were then delivered to the plaintiffs who sent the relevant transfers to the registrars of Singapore Press Holdings Ltd for registration.

The second defendants went into receivership in Singapore on 8 May 1987. On 11 June 1987, the receivers and managers wrote to the plaintiffs and claimed that the 8,000 SPH shares belonged to the second defendants. The first defendant then made a claim that he was the beneficial owner of the said shares. Hence these proceedings.

The basis of the second defendants' claim is straightforward. Here I should add that the claim is in effect a claim by the receivers and managers in discharge of their duty to recover the charged assets of the company for the benefit of the debenture holder. The true claimant in this case is the debenture holder and not the second defendants. The third defendants have not objected to the form of these proceedings. The second defendants were carrying on business as an advertising agency. Its original name was Quantum: Foote, Cone & Belding Advertising Pte Ltd. This name was subsequently changed to Quantum Advertising Pte Ltd. The reason for the change of name has not been explained to the court but there is sufficient evidence in the affidavits for the court to conclude that a Delaware corporation called Foote, Cone & Belding Communications Inc ('FCB') had, prior to the change of name, directly or indirectly, an interest in the second defendants and that this business connection was severed shortly before the receivers and managers were appointed.

To come back to my narrative: on 16 December 1985 the second defendants executed a debenture ('the debenture') in favour of Citibank NA whereby they charged all their undertaking, property and assets, present and future, by way of floating charge as security for the payment of all moneys or liabilities becoming due to Citibank NA. The debenture contained the standard restriction in cl 6(B) which reads:

> The borrower shall not have power to create any pledge, lien, mortgage, charge or other encumbrance whatsoever whether fixed or floating ranking in priority to or pari passu with or next after this deed in respect of any of the assets of the borrower or sell or dispose of in any way the undertaking of the borrower or any part thereof or to factor its book debts except with the prior written consent of the lender.

Particulars of the charge were duly registered in the Registry of Companies and Companies Form 34 as filed contained the following words to describe the debenture:

> Debenture which contains a prohibition against the company creating any pledge, lien, mortgage, charge or other encumbrance whatsoever fixed or floating ranking in priority to or pari passu with or next after the charge created by the debenture in respect of any of the assets of the company or selling its whole undertaking or dealing with its book debts except with the prior consent of the bank.

On 5 May 1987, Citibank NA assigned the benefit of the debenture to the Delaware corporation, FCB, which on the next day in the State of Illinois, USA executed a deed of appointment whereby they appointed the receivers and managers who were three partners of M/s Coopers & Lybrand, Singapore. The said deed of appointment was transmitted to the office of M/s Coopers & Lybrand in Singapore by facsimile transmission and it reached them on 8 May 1987 at 1531 hours Singapore time. The event of default upon which the receivers and managers were appointed has not been disclosed to the court nor challenged by the first defendant or the third defendants. I must therefore assume that the second defendants had already committed such an event of default by 6 May 1987, if not earlier. It may also be reasonable for the court to infer from this that the first defendant as a director must have realized in the later part of April or early part of May 1987 that the second defendants would shortly be put into receivership.

The first defendant and one Mak Kok Weng were at all material times the directors of the second defendants. From the affidavits filed herein, it is fair to conclude that both the directors knew more about the transaction giving rise to the present dispute than they have been prepared to disclose or explain to the court. Some of the material events which involved both of them and which have not been explained to the court were as follows:

(1) On 5 May 1987, the first defendant and Mak Kok Weng as directors passed a board resolution as follows:

> That 9,000 shares of Singapore Press Holdings Ltd purchased by the company at the cost of $69,491.35 be transferred to Mr Jon Phua Ooi Yong in part repayment of the company's outstanding loan owed to him.

In view of the claim of the first defendant to the beneficial ownership of the 8,000 SPH shares, I must assume that these shares were part of this 9,000 shares referred to in the said resolution.

(2) Prior to this resolution, the second defendants had on 27 April 1987 in a letter signed by the first defendant requested Mak's firm, viz Mak & Partners, as the second defendants' solicitors to give to the third defendants their undertaking as solicitors, to return 6,000 SPH shares (which were in the custody of the third defendants) to the third defendants after they had been registered in the name of the second defendants. A similar letter was written to the solicitors on 4 May 1987 in respect of the remaining 2,000 SPH shares.

(3) Mak & Partners, as requested, gave their written undertakings to the third defendants on 29 April 1987 in respect of the 6,000 SPH shares and on 6 May 1987 in respect of the 2,000 SPH shares. Presumably, the said shares were returned by the third defendants on the said dates. The undertakings are expressed in like words. Except for the number and name of the registered shareholders, as indicated in parenthesis below, they read as follows:

> As requested by our clients, Quantum Advertising Pte Ltd, we hereby undertake to return to you all 6,000 [2,000] shares in Singapore Press Holdings Ltd, presently registered in the name of UOB Nominees Pte Ltd, [Citicorp Investment Bank (Singapore) Limited] upon final registration of the same in the name of our clients.

(4) Thus, it can be seen that whilst Mak & Partners were giving their undertaking to the third defendants to return the 2,000 SPH shares after registration in the second defendants' name, a decision had already been made by Mak and the first defendant as directors of the second defendants to transfer the shares to the first defendant. The reason for this exercise has not been explained to the court.

(5) The first defendant has filed an affidavit in para 4 of which he deposed as follows:

> Sometime around 20 May 1987 and 2 June 1987, the said 8,000 shares valued at $8.05 per share were transferred to me in part payment of the second defendants' outstanding loan of one million dollars ($1 million) due and owing to me.

In para 8 of the same affidavit, the first defendant stated:

> I therefore claim these 8,000 shares as legal owner, subject to the pledge of the said shares to the third defendants.

The claim of the first defendant to the ownership of the shares subject to the pledge in favour of the third defendants is difficult to understand. Why did the first defendant agree to set off a debt, the value of the shares, against a loan of $1 million due to him from the company when the shares were already pledged to secure the second defendants' indebtedness to the third defendants at a time when the second defendants were just about to go into receivership? This again is one of the unexplained events in this case.

When was the beneficial title in the 8,000 SPH shares vested in the first defendant? The board resolution of 5 May 1987 approved the transfer but did not name a date. The first defendant himself was not sure because para 4 of the affidavit refers to a date 'around 20 May 1987 and 2 June 1987', presumably meaning on any day during that period. However, there is a notation in the letter dated 6 May 1987 from the second defendants to the third defendants enclosing the 2,000 SPH shares which is as follows: 'transferred to Jon Phua 2/6'. As this letter is exhibited marked 'TLP-4' in the affidavit of Thio Lai Ping filed on behalf of the third defendants on 13 August 1987, this must be independent corroborative evidence that the 2,000 SPH shares were transferred on that day. Presumably, the other 6,000 SPH shares were also 'transferred' on the same date.

But whatever the precise date of the transfer was during this period, the transfer could not have been valid because the second defendants had already gone into receivership by 8 May 1987. The first defendant was a director of the second defendants and therefore he must have known about the receivership. So why was the transfer effected, as indeed it was? It was not surprising therefore that in the course of the hearing, the first defendant decided to withdraw his claim to the 8,000 SPH shares.

The third defendants' claim to the 8,000 SPH shares is founded upon a memorandum of deposit dated 23 April 1987 ('the memorandum of deposit') and a letter of pledge dated 6 May 1987 ('the letter of pledge'). They claim that pursuant to the said memorandum the second defendants deposited 6,000 SPH shares with them on 23 April 1987 and subsequently on 6 May 1987 pledged another 2,000 SPH shares. There is no documentary evidence showing actual delivery of the said shares to the third defendants although the receivers and managers have not denied delivery. There was, however, a covering letter relating to the delivery of the 2,000 SPH shares to the third defendants. The 8,000 SPH shares were subsequently returned to the second defendants for the purpose of registration in the name of the second defendants.

The third defendants say, through their counsel, that when the SPH shares were deposited with them as security, they did not make any search in the Registry of Companies for existing charges registered against the second defendants, that it was not incumbent upon them to do so and that they accordingly had no actual knowledge of the terms of the debenture or of Companies Form 40 filed by the second defendants in the Registry of Companies. Counsel for the third defendants does not dispute that by virtue of the registration of the particulars of the debenture, the third defendants are deemed to have notice or knowledge of the debenture by way of the floating charge but he disputed that such registration by itself constitutes notice of the restriction clause in or the terms of the debenture: see *Wilson* v *Kelland*.[1]

The third defendants claim the 8,000 SPH shares in priority to the claim of the receivers and managers on the ground that they have taken specific charge on the property without notice of the restriction clause. This is a contest between a prior floating charge and a subsequent specific charge. It is settled law that an encumbrancer in the third defendants' position who has no notice of the restriction clause would be entitled to priority. A subsequent specific chargee who has notice of a restriction clause in a floating charge is bound by it. He cannot take advantage of the nature of a floating charge as a security (with the inherent weakness that the chargor may deal with the property in the ordinary course of its business) by taking a specific charge on and claiming priority to the same property when he has notice or ought to have notice that it is being given by the chargor in breach of his contractual obligation to the debenture holder.

In relation to the facts, counsel for the third defendants contends that his clients, being publishers and not financiers, are not expected to and in this case they did not make a search in the Registry of Companies to find out if the assets of the second defendants were subject to existing charges. The third defendants therefore, it was argued, did not have actual notice of the debenture.

In relation to the law, it is contended that the third defendants cannot be imposed with constructive notice of the restriction clause in the debenture merely because that restriction clause has been registered as one of the particulars or a copy of the debenture has been lodged with the Registrar of Companies. Counsel adopted the view set out in *Gough on Company Charges*, 1978 (at pp 371-372):

> *Restrictive clauses in floating security considered.*
>
> The doctrine of constructive notice under s 95 was considered by the courts in the context of a restrictive clause in a floating charge. Constructive notice that a floating charge had previously been created by the company would not prevent a subsequent specific assignee from taking priority because of the nature of the floating charge: only if there was also notice of the restrictive clause itself would he be postponed. The answer then given was that because the restrictive clause was not one of the prescribed particulars to be presented for registration and, accordingly, would not appear on the register there could be no constructive notice thereof. The question might be asked whether it would be otherwise if the person registering of his own motion simply added to the particulars presented to the Registrar a note of the fact of existence of the restrictive clause and the types of charge against which it extended. It is suggested that if the statute itself does not prescribe the registration of certain matters, registration by a creditor of such matters for the purpose of giving notice thereof to all the world would not be effective to fix a subsequent secured creditor with constructive notice thereof, since it cannot be said that the latter ought to know (and therefore is to be treated as if he does know) of matters which the law does not require to be registered. Nonetheless, the opposite view is frequently suggested, in the words of Gore-Browne:
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> 'In order to give greater protection to floating charges, the practice has developed, which the Registrar has accepted, of including the prohibition in the trust deed among the registered particulars of the charge. It is widely assumed that this will give constructive notice of the prohibition, but this has not yet been tested in the courts.'
>
> The solution to several difficult priority questions depends on whichever is the correct view. If a floating charge which contained no restrictive clause or if registration of a note of a restrictive clause was of no effect for the purpose of giving notice, then the constructive notice arising from the registration of a floating charge, because of its very nature, would not operate so as to change the priority rule of the general law, viz that a subsequent specific charge would take priority.

The contentions of counsel for the receivers and managers are firstly, there was no consideration provided by the third defendants for their security, and secondly, that the third defendants must be deemed to have such notice of the restriction clause by virtue of the registration thereof as one of the particulars in Companies Form 34.

The issue of whether a subsequent chargee has in law constructive notice of a restriction clause which has been registered as one of the particulars of a charge with the Registrar of Companies has been the subject of much academic discussion in England. Two opposing arguments are set out in the passage from *Gough on Company Charges* which I have quoted. There are other arguments mainly centred on policy grounds: see *Picarda: The Law Relating to Receivers & Managers*, 1984, at pp 11-13.

Much as I would like to take this opportunity to render a decision on this point, I have decided, *ex abundanti cautela*, not to do so for this reason. This issue has great significance to the financial institutions in Singapore and the way they structure their security arrangements for loans and advances to be granted to their customers. Given the fact, to my knowledge, that many financial institutions have accepted as security floating charges in form and substance which are similar to the

debenture, I do not think it is wise of me to lay down a principle of law on such an important issue unless full arguments have been canvassed before me, which in this case, I did not have the benefit of, and where I am able to dispose of the action on a different ground.

There is such a ground in this case. It has to do with the mundane issue of the burden of proof. In para 3 of his affidavit of 15 October 1987, Edwin Khoo, one of the receivers and managers, challenges the validity of the third defendants' security and puts them to strict proof. This challenge obviously covers the question of priority between the two claims.

The issue is who has to prove that he has priority in respect of the 8,000 SPH shares and what are the elements of that burden of proof. As I have already stated, this is a contest between a prior floating chargee and a subsequent specific chargee. The general principle is that whoever makes an assertion must prove it. In the present case, the receivers and managers have no need to assert priority against the third defendants. They only need to produce the debenture which gives the debenture holder a floating charge before any other claimant. It is the third defendants who have to assert that they have displaced the prior encumbrancer in respect of the 8,000 SPH shares: they are asserting priority. Accordingly, they have the burden of proof.

The position of the third defendants is that of, or akin to, a bona fide purchaser for value without notice of the rights of a prior encumbrancer, in this case, the rights of the debenture holder under a debenture which has a restrictive clause. In *Feuer Leather Corpn* v *Johnstone & Sons*,[2] the plaintiffs claimed that the defendants had acquired certain goods which had been sold to them by the plaintiffs' agents in breach of trust of their duties. The defendants claimed that they were bona fide purchasers for value without notice. Neill J, following the judgment of Danckwerts J in *GL Baker Ltd* v *Medway Building & Supplies Ltd*,[3] held that the burden of proving a bona fide purchase for value without notice rested on the person who asserted it.

In *Union Bank of Halifax* v *The Indian & General Investment Trust*,[4] a company had by a trust deed created a floating charge on its assets to secure bonds issued by it. The trust deed contained a restriction clause prohibiting the company from mortgaging or charging the same assets in priority to or pari passu with the security thereby created. Subsequently, the company gave a specific charge over certain wood pulp in favour of a bank. The evidence adduced at the trial was unclear as to whether the bank had notice of the restriction clause in the trust deed and the trial judge made no finding on this. Duff J, delivering the leading judgment of the Supreme Court of Canada (with which three other members agreed), held, inter alia, that the onus was on the subsequent encumbrancer to prove that he had acquired his interest for value and without notice of the rights of the trustee under the trust deed and that the plea of purchase for value without notice was a single plea to be proved by the person pleading it; it was not to be regarded as a plea for purchase for value to be met by reply of notice thereto. On the evidence, the judge held that the subsequent encumbrancer had failed to discharge the burden of proving that he had no notice of the restriction clause.

Have the third defendants discharged the burden of proof? I shall consider first the question whether the third defendants have proved that they have given consideration for the said security.

The certificates for the 8,000 SPH shares were deposited as security under the memorandum of deposit, cl 1 of which provides that:

> In consideration of your making or continuing to make loans or extending or continuing to extend credit in any form whatsoever or incurring liability on our behalf or for our account or at our request or otherwise in any way whatsoever to the extent of $46,500 in lieu of making cash prepayment for the cost of placing existing and future advertisements with The Straits Times Group of newspapers and publications in accordance with the terms and conditions contained in the rate book (in so far as applicable) we, Quantum Advertising Pte Ltd of 73 Bukit Timah Road, Tong Nam Building #03-01, Singapore 0922 acknowledge and agree to hereby deliver, deposit and pledge with The Straits Times Press (1975) Ltd 6,000 Singapore Press Holdings shares warranted to be owned by us which value may either be agreed between the parties to be due to you in respect of your claim under the outstanding running account or which may be ascertained to be due to you in respect thereof. The value of the said shares so pledged with you shall be net and exclusive of rights, dividends, bonus issues, interest of which may at any time during the currency of this memorandum be issued in respect of any of the shares for the time being subject to the provisions of this memorandum.

The pledge of the remaining 2,000 SPH shares was governed by the letter of pledge which reads:

> Enclosed are 2,000 Singapore Press Holdings shares, certificate nos: (1) 257910; (2) 257911.
>
> We would like to pledge them with you in lieu of the banker's guarantee.

The third defendants have produced evidence to show that at the beginning of April 1987, the second defendants had a debit account with them of $404,270.23 which was secured by a guarantee issued by Citibank NA for the sum of $400,000. So on 3 April 1987, the third defendants called on this guarantee and was paid the sum of $400,000 on 7 April 1987. It should be recalled that on 7 April 1987 Citibank NA was still the debenture holder and, presumably, this sum of $400,000 was part of the banking facility given by Citibank to the second defendants which was secured by the debenture.

The second defendants were then in a parlous state in April 1987. However, the third defendants continued to give credit to the second defendants and on 14 April 1987 obtained a cheque for $50,000 from the second defendants as security pending the provision of other securities which was done on 27 April 1987 by the deposit of the 6,000 SPH shares. The amount outstanding as at 23 April 1987 was $106,726.39 and as at 6 May 1987 was $177,569.72.

There is then no doubt that consideration was provided by the third defendants for the 6,000 SPH shares. However, the same cannot be said for the 2,000 SPH shares on 6 May 1987. No further credit was provided as the second defendants were put into receivership on 8 May 1987. On these facts, the third defendants can only succeed, if at all, in respect of the 6,000 SPH shares.

I come now to the question of actual notice or constructive notice. Counsel for the receivers and managers has argued that the fact that the third defendants had been able to obtain the Citibank guarantee and its encashment must have alerted them to a number of things: firstly, the banking relationship between Citibank and the second defendants had provided Citibank with security for the guarantee; secondly, the financial condition of the second defendants. The third defendants could be said to have turned a blind eye to something they could have easily found out. It seems to me that there is a point in this submission: there would be a complete lack of commercial realism in the conduct of the third defendants if they did not think or consider that Citibank would have obtained security for the guarantee, which was for a substantial amount, it gave for the account of the second defendants. The cross-examination of the third defendants might have yielded additional evidence on how much the third defendants had known when they asked for or were offered the Citibank guarantee before they agreed to give credit to the second defendants. But I have not heard oral evidence. Therefore, it would not be proper or correct for me to make any finding on whether there was constructive notice.

As regards the burden of proof on the absence of notice, I find no assertion in any of the affidavits filed in support of the third defendants' case that the third defendants had made no search in the Registry of Companies or otherwise was not aware of the debenture and the registered particulars. There is total silence on this point.

Accordingly, I am compelled to hold that the third defendants have failed to discharge the burden of proving that they had no notice of the debenture and the particulars registered with the Registrar of Companies.

There will accordingly be an order that the plaintiffs deliver the 8,000 SPH shares to the receivers and managers for disposal under the terms of the debenture. The costs of the plaintiffs and the receivers and managers in these proceedings will be borne by the first defendant and the third defendants in equal shares.

Order accordingly.

Solicitors: *Tan Rajah & Cheah*; *Abraham Low & Partners*; *Ramdas & Wong*; *Godwin & Co.*

Reported by *Wong Kim Fatt*

Re Abdul Rahim Rajudin

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 973 OF 1987
WEE CHONG JIN CJ, SINNATHURAY AND THEAN JJ
2 NOVEMBER 1988

Legal Profession – Disciplinary proceedings – Complaint of demand by advocate and solicitor for unconscionable commissions for putting through land transactions – Complaint that advocate and solicitor rendered excessive bill – Grossly improper conduct – Legal Profession Act (Cap 161, 1985 Ed), s 80(2) – Solicitors' Remuneration Order 1974, Schedule 1, r 14 & Schedule VI

Words and Phrases – 'Grossly improper conduct – Legal Profession Act (Cap 161, 1985 Ed), s 80(2)(b)

Following an inquiry by the Disciplinary Committee ('the committee), the Law Society of Singapore brought the instant application calling upon the respondent to show cause why he should not be dealt with under the provisions of s 80(2) of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act'). There were three complaints against the respondent, namely: (i) that the respondent took advantage of his client, one Peter Chaw, in demanding unconscionable commissions for putting through various land transactions; (ii) that he committed a breach of r 14 of Schedule 1 to the Solicitors' Remuneration Order 1974 (which rule provided for a negotiating fee) in that by a note ('the note') having solicited for and having agreed to accept a commission of $23,844.75 computed at the rate of 25 cents per sq ft of the property concerned as remuneration for services rendered in securing a buyer, he had subsequently entered into an agreement with Peter Chaw ('the commission agreement') to take a further sum of $119,223.75 computed at the rate of $1.25 per sq ft of the property as further remuneration for services rendered in securing a buyer; and (iii) that he rendered an excessive bill of costs for $150,000 ('the bill'). By reason of these matters, it was alleged that the respondent: (i) had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Act; and (ii) that he had contravened s 80(2)(j) of the Act. It was in evidence and was accepted by the committee that the note which provided for payment of commission at the rate of 25 cents per sq ft had merged into the commission agreement and that subsequently by agreement between the respondent and Peter Chaw's new solicitor the commission of $119,223.75 was treated as including the respondent's costs from 4 October 1979 to 25 June 1980. The respondent maintained that of that sum his costs and disbursements were approximately $50,000 and the balance sum of $69,000 represented the commission or 'finder's fees' for securing a purchaser.